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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,861	09/11/2003	Jim Azzar	HOL01 P-102	5077

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VAN DYKE, GARDNER, LINN AND BURKHART, LLP
2851 CHARLEVOIX DRIVE, S.E.
P.O. BOX 888695
GRAND RAPIDS, MI 49588-8695

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/659,861

Applicant(s)

AZZAR, JIM

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4 and 6-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4 and 6-21 is/are rejected.
- 7) ☒ Claim(s) 8,9,11-17 and 21 is/are objected to.
- 8) ☒ Claim(s) 9 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9-11-03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1, 2, 4, 6-21 are pending. Claims 3, 5 and 22-25 are canceled.

Newly submitted claim 9 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The portion of claim 9 pertaining to bumps, ridges or perforations is an embodiment that had not been elected.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 9 has been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the indicia of claims 8, 17 and 21, the bumps, ridges and perforations of claim 9 and the terminal edge of the liner which terminates before the rolled upper edge of the tray as in claim 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claims 8, 9, 11-17 and 21 are objected to because the indicia of claims 8, 17 and 21, the bumps, ridges and perforations of claim 9 and the terminal edge of the liner which terminates before the rolled upper edge of the tray as in claim 11 have not been depicted in a drawing.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 11-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The terminal edge of the liner which terminates before the rolled upper edge of the tray as in claim 11 had not been discussed in the written specification, claims or abstract and had not been depicted in the drawing. A review of Fig. 2, a top perspective view, is inconclusive of the position of the upper edge of the liner in relation to the rolled upper edge, it can't be accurately deciphered whether this upper edge is above, below or at the same height as the rolled upper edge. **This is a new matter rejection.**

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 9, 10, 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (US 5782374). With respect to claims 1, 11, 18, Walker discloses the following:

- Plastic tray with a planar base wall and sidewalls (Fig. 4)
- Flexible paper-based liner (Col 4, Lines 45-52) that conforms to and contacts the base and sidewalls (Fig. 4).

With respect to claims 2, Walker discloses the sidewalls forming a solid perimeter wall (Fig. 4).

With respect to claims 4, 19, Walker discloses the liner being flexible paper board (Col 4, Lines 45-52).

With respect to claim 4, Walker discloses the liner being preformed and flexible (i.e. paper).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Alticosalian.

Walker discloses the invention except for the rolled upper edge of the tray and the terminal edge of the liner. Alticosalian discloses a similar container in Fig. 6 and 7 with a rolled upper edge of the tray and a liner with a terminal edge. It would have been obvious to modify the upper edge configuration to have a rolled tray upper edge and a liner terminal edge to allow for mounting of the liner in a different fashion as a matter of design choice.

Claims 1, 2, 4, 6, 7, 9, 10 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley in view of Anderson.

Wiley discloses the tray 52 and liner 50 as shown in Fig. 13, the liner can be made from sheet 20 which comprises a matrix 22 of paper or paperboard (see col. 3, lines 26-27, 34-36; col. 5, lines 33-36). Wiley discloses the invention except for the sheet being preformed and the tray being plastic. Anderson teaches a preformed sheet of paper material. It would have been obvious to modify the sheet to be preformed to provide the convenience of not having to form the sheet as it is inserted into the tray which allows the liners to have a more uniform appearance. Official notice is taken that plastic trays are well known. It would have been obvious to modify the tray material to be plastic because of its easy moldability, ready availability and low cost.

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wiley in view of Anderson and Alticosalian.

The Wiley-Anderson combination discloses the invention except for the rolled upper edge of the tray and the terminal edge of the liner. Alticosalian discloses a similar container in Fig. 6 and 7 with a rolled upper edge of the tray and a liner with a terminal edge. It would have

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been obvious to modify the upper edge configuration to have a rolled tray upper edge and a liner terminal edge to allow for mounting of the liner in a different fashion as a matter of design choice.

Claims 8, 17, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker or [Walker in view of Alticosalian] or [Wiley in view of Anderson] or [Wiley in view of Anderson and Alticosalian], further in view of Ross Jr. (US 6639199 B1).

Walker and the combinations disclose the claimed invention except for the liner including indicia. Ross Jr. teaches a food-holding container having indicia so as to provide an emblem to provide aesthetic value to the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add indicia to the liner of Walker as taught by Ross Jr. so as to provide aesthetic value to the container.


Applicant's arguments filed December 28, 2006 have been fully considered but they are not persuasive. Applicant argues that the liner of Walker is not preformed and conforms to and contacts the base and sidewalls of the tray. However, Walker shows a preformed liner D that conforms to and contacts the tray member C in Fig. 4. Applicant argues that the container system of Walker is intended for animals and not for humans. Recitation of "human" in the preamble or body of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of use by humans, then it meets the claim. Humans are animals. Humans are capable of using the tray assembly as a serving tray and the tray assembly is capable of holding human food.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony D. Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Stephen J. Castellano
Primary Examiner
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sjc